

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

SOUTHWEST FLORIDA  
MARITIME, INC.,  
d/b/a SEA TOW FORT MYERS,  
and its stockholders, as owners  
and/or owners *pro hac vice*  
of a 1987 24' XDC Fiberglass  
Outboard Vessel, Registration  
Number FL4439SJ, including her  
engines, gear, tackle, appurtenances,  
equipment, furniture, etc.,

Case No. 2:20-cv-552-FtM-66NPM  
IN ADMIRALTY

Plaintiff.

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**REPORT AND RECOMMENDATION**

Before the Court is Plaintiff's Motion for Entry of Final Judgment of Exoneration of Liability. (Doc. 20). Plaintiff Southwest Florida Maritime, Inc. is the owner of a 1987 24' XDC Fiberglass Outboard Vessel, Registration Number FL4439SJ, including her engines, gear, tackle, appurtenances, equipment, furniture, etc. (Doc. 1, p. 1). Plaintiff requests the Court enter a final judgment of exoneration of liability in connection with the incident of February 2, 2020 described in the Complaint and Petition. (Docs. 1, 20).

Pursuant to Supplemental Rule 4:

[T]he court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for

the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent's last known address, and also to any person who shall be known to have made any claim on account of such death.

Supp. Adm. R. F(4). After notice is given, all claims “shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued.” Supp. Adm. R. F(5). If a claimant seeks to contest either the right to exoneration from, or the right to limitation of, liability, then the claimant must file and serve an answer to the complaint unless the claim has included an answer. *Id.*

In the Order Approving Ad Interim Stipulation of Value and Directing Issuance of Limitation Injunction and Notice (Doc. 7), the Court set a date of September 28, 2020 for all persons claiming damage to file a claim and answer to the Complaint with the Clerk of Court and to serve or mail copies to the attorneys for Plaintiff. (Doc. 10). No one filed a claim or answer.

On October 22, 2020 the Court granted Plaintiff’s construed Motion for Clerk’s Default and directed the Clerk of Court to enter default against all potential

claimants. (Doc. 18). The following day, the Clerk of Court entered a default “against all persons and entities that have not filed a claim or answer in this action” (Doc. 19).

Petitioner now seeks default judgment against all non-filing parties. (Doc. 20). Based upon Petitioner complying with the Supplemental Admiralty Rules as well as the Local Rules for the Middle District of Florida, the Court finds good cause to enter a Default Judgment against all non-filing parties.

Accordingly, it is respectfully recommended:

- 1) The Motion for Entry of Final Judgment of Exoneration of Liability (Doc. 20) be **GRANTED**.
- 2) The Clerk of Court be directed to enter a default judgement in favor of Southwest Florida Maritime, Inc., as owner of the 1987 24’ XDC Fiberglass Outboard Vessel, Registration Number FL4439SJ, her engines, tackle, and appurtenances, against all claimants who have not timely filed claims or answers in response to the Petition for Exoneration From or Limitation of Liability.
- 3) The judgment expressly provide that Plaintiff and its vessel be exonerated from any and all liability in connection with the incident of February 2, 2020, described in the Complaint and Petition and involving the Plaintiff, the vessel, Evan Wells, and any others.

Reported in Fort Myers, Florida on December 15, 2020.

  
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NICHOLAS P. MIZELL  
UNITED STATES MAGISTRATE JUDGE

### **NOTICE TO PARTIES**

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.